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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,185	12/05/2003	Roger Thomas	P-US-PR 1108	2379
28268	7590	04/28/2006	EXAMINER	
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			SELF, SHELLEY M	
			ART UNIT	PAPER NUMBER
			3725	
DATE MAILED: 04/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,185

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 13, 2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellew et al. (5,463,816) in view of Eichberger et al. (5,815,934) and Van Swearingen (3,952,484). With regard to claims 1-3 and 5, Bellew discloses a planer assembly comprising a planer and a debris collection container capable of being connected to the planer, the planer comprising: a shoe defining an aperture (fig. 5); a body mounted on the shoe, the body defining a recess (fig. 5) and an exhaust aperture (figs. 3-5); a cutting drum (28) having blades (40) rotatably mounted within the recess of the body, a part of the periphery of the cutting drum projecting through the aperture (fig. 5) in the shoe; a deflector (12) having a connector (56); a motor (24) driveably connected to

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the cutting drum; an airflow generator (26) operable to create an airflow within the body for entraining debris created by the action of the cutting drum and to move the debris to the exhaust aperture through which the air and any entrained debris are expelled from the body; and the debris collection container comprising: a receptacle/bag for storage of debris (col.4, lines 9-11) generated by the cutting drum; a curved, part spherical connector (56; figs. 2, 3) connectable between the receptacle/bag and the exhaust aperture of the body of the planer and through which debris can pass from the body to the receptacle. Bellew does not disclose at least a portion of the connector is transparent for viewing debris or the deflector to have a curved section that has a substantially U-shaped cross section.

Eichberger teaches in a very similar art a planer assembly comprising a shoe defining an aperture (fig. 1) a body (fig. 1) a cutting drum (15) a motor (8, 19) an airflow generator, a deflector (50) having a curved section that has a substantially U-Shaped cross section (fig. 7-9; col. 4, lines 60-63) that is connectable an exhaust aperture (25, 52) for chip ejection/removal from the planer apparatus. Eichberger teaches this construction so as to efficiently remove/eject chips formed during operation from the planer. Because the references are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Bellew having a deflector having a substantially U-shaped cross section connectable to the exhaust aperture for efficiently removing and/or ejecting chips/debris from the planer as taught by Eichberger.

As to the transparency of the deflector/connector, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct either Bellew's connector (56) and deflector (12) or Eichberger's deflector/connector of transparent material because it is within

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the general skill of a worker in the art to select a known material on basis of its suitability for the intended use as a matter of obvious design choice. The mere selection of a known material, i.e. transparent does not in itself warrant patentability. See *In re Leshin*, 125 USPQ 416.

Moreover, Van Swearingen teaches in a closely related art the use of a transparent connector (5; col. 1, lines 61-64) in conjunction with a cutting device and dust/bag collector container assembly. Van Swearingen teaches a cutter (1) having an expulsion aperture (2) for expelling cut debris from a material. Van Swearingen further teaches a connector (5) connected to expulsion aperture (2) and further connected to a debris collection container (fig. 1). Van Swearingen explicitly teaches the use of a transparent connector (5) so as to view the debris being expelled to the debris collection container. Because the reference are from a closely related art and deal with a similar problem (i.e. expulsion of cut debris from a workpiece into a debris collection container so as not to jam the cutting machine) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Bellew's connector (56) of a transparent material so as efficiently monitor the expulsion of the debris from the cutter into the debris collection container as taught by Van Swearingen.

With regard to claim 4, Bellew discloses the curved connector acts as a deflector to turn the direction of travel of the air or debris entrained within the air in the connector (12) through substantially ninety degrees (figs. 2, 3; col. 3, lines 56-65).

### ***Response to Arguments***

Applicant's arguments with have been carefully considered but are moot in view of the new ground(s) of rejection. Applicant's arguments are drawn to the failure of the prior art

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reference, Bellew to disclose a deflector having a curved substantially U-shaped cross section, however Eichberger teaches this deficiency as noted above. According a new rejection is made.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf

April 19, 2006